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BY: J. Seguin

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IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

26 JOHN B. CUNDIFF and BARBARA C.  
27 CUNDIFF, husband and wife; ELIZABETH  
28 NASH, a married woman dealing with her  
29 separate property; KENNETH PAGE and  
30 KATHRYN PAGE, as Trustee of the Kenneth  
31 Page and Catherine Page Trust,

32 Plaintiffs,

33 vs.

34 DONALD COX and CATHERINE COX,  
35 husband and wife,

36 Defendants.

CASE NO. CV 2003-0399

**PLAINTIFFS' SECOND  
AMENDED COMPLAINT -  
COMPLAINT IN CLASS  
ACTION**

37 Plaintiffs, on their own behalf and as representatives of persons similarly situated, for  
38 their Complaint against the defendants named herein, allege as follows:

39 **PARTIES**

40 1. The Plaintiffs in this matter own real property in Coyote Springs Ranch,  
41 Yavapai County, Arizona.

42 2. The Defendants in this matter own real property in Coyote Springs Ranch,  
43 Yavapai County, Arizona.

44 **JURISDICTION AND VENUE**

45 3. Under Article VI, § 14 of the Arizona Constitution, the Superior Court is a court

1 of general jurisdiction. Pursuant to A.R.S. § 12-123, the Superior Court has jurisdiction over  
2 this claim. Further, jurisdiction is proper since the real property and events are located within  
3 Yavapai County, Arizona.

4 4. Venue is appropriate according to A.R.S. § 12-401.

5 **CLASS ACTION ALLEGATIONS**

6 5. Plaintiffs reallege those allegations contained in paragraphs 1 through 4 above  
7 as though fully set forth herein.

8 6. This action is instituted by the plaintiffs on behalf of themselves and on behalf  
9 of all other persons similarly situated to the plaintiffs to wit: the class of individuals and  
10 entities owning property in Coyote Springs Ranch and subject to a recorded Declaration of  
11 Restrictions (hereinafter, "Restrictions".)

12 7. Plaintiffs presently believe and therefore allege that the class includes over three  
13 hundred (300) separate individuals and entities, and is so numerous that joinder of all members  
14 of the class would be impracticable.

15 8. The claims for relief asserted herein on behalf of plaintiffs and the class present  
16 questions of law and fact common to the class, including:

17 a.) Whether the recorded Restrictions are valid and enforceable;

18 b.) Whether this Court must declare the rights and other legal relations  
19 among the Plaintiffs and Defendants arising from the recorded Restrictions;

20 Whether the conduct of Defendants Cox is a breach of the recorded Restrictions;

21 c.) Whether Defendants Cox should be permanently enjoined from  
22 initiating, maintaining or expanding their current business enterprise on said property as  
23 a violation of the Restrictions;  
24

1           d.)     Whether this Court should order Defendants Cox to remove any and all  
2 conditions or activities on said land which violate any restriction or covenant as  
3 provided in the recorded Restrictions;

4           e.)     Whether the Restrictions have been abandoned.

5           9.     The plaintiffs as representative parties will fairly and adequately protect the  
6 interests of the class for the reason that they and all other property owners in Coyote Springs  
7 Ranch agreed to be bound by the Restrictions and to the enforcement of the restrictions and  
8 covenants contained within the Restrictions.

9           10.    The prosecution of separate actions by individual members of the class would  
10 create a risk of inconsistent or varying adjudication with respect to individual members of the  
11 class which would establish incompatible standards of conduct for any party opposing the  
12 class, to wit:

13           a.)    Both Plaintiffs and Defendants may be subject to multiple litigation if  
14 the other property owners are not represented by a class;

15           b.)    Present non-party owners may align with either side in this lawsuit;

16           c.)    If Plaintiffs establish that the Restrictions have not been abandoned, a  
17 non-class member/party could file a separate declaratory action against Plaintiffs  
18 asserting that there has been an abandonment on separate facts. The first decision  
19 would not be binding on the parties in the second suit;

20           d.)    If Defendants establish abandonment, any non-class member/party could  
21 file a suit identical to the present one against the present Defendants and the Defendants  
22 could not assert that the first decision was binding on the parties in the second suit.

23           e.)    Individual adjudications would dispose of the interests of other class  
24 members not parties to the adjudications and impair or impede their ability to protect  
25 those interests.

1 11. The present lawsuit presents questions of law or fact common to the class and  
2 which predominate over questions that affect only individual members.

3 12. A class action is the superior vehicle for resolving the controversy.

4 **CLAIMS FOR RELIEF**

5 **General Allegations Common to All Counts**

6 13. Plaintiffs reallege those allegations contained in paragraphs 1 through 12 above  
7 as though fully set forth herein.

8 14. Plaintiffs are owners of real property located in Coyote Springs Ranch,  
9 Yavapai County Arizona, more particularly described as:

10 Government Lots One (1) and Two (2) and the south half of the Northeast quarter  
11 and the Southeast quarter of Section one (1); all of Section Twelve (12); the East  
12 half and the East half of the Southwest quarter and the East half of the East half of  
13 the Northeast quarter and the Northwest quarter of the Northeast quarter of Section  
14 thirteen (13); the East half of Section Twenty-four (24); the East half of Section  
15 Twenty-five (25), all in township Fifteen (15) North, Range One (1) West of the  
16 Gila and Salt River Base and Meridian; and,

17 All of Section Six (6); all of Section (7), Government Lots One (1), Two (2), Three  
18 (3), and Four (4), and the Southeast quarter of the Southwest quarter and the South  
19 half of the Northeast quarter of the southwest quarter of Section Nineteen (19), all  
20 in Township Fifteen (15) North, Range One (1) East of the Gila and Salt River Base  
21 and Meridian.

22 15. Defendants are owners of real property located in Coyote Springs Ranch,  
23 Yavapai County, Arizona, more particularly described herein in paragraph 14.

24 16. On or about June 13, 1974, Robert D. Conlin, Margaret Dell Conlin and David  
25 A. Conlin, Jr., the then owners of the real property described above, recorded the Restrictions  
in the Office of the County Recorder of Yavapai County, Arizona, the same being recorded in  
Book 916, Official Records, Pages 680, 681 and 682, Records of Yavapai County, Arizona.  
Said Restrictions are attached hereto and incorporated by reference herein as Exhibit "A" as

1 though fully set forth herein.

2 17. Said Restrictions (Exhibit A) establish and evidence the nature of and  
3 enjoyment of said real property.

4 18. Thereafter, Robert D. Conlin, Margaret Dell Conlin, and David A. Conlin, Jr.,  
5 sold and conveyed many of the lots to different grantees pursuant to and in accordance with the  
6 plat of the tract.

7 19. Said conveyances to different grantees by the common grantors, Conlin, were  
8 pursuant to the recorded Restrictions.

9 20. Plaintiffs and Defendants each took their real property subject to the recorded  
10 Restrictions.

11 21. The Restrictions contained the following covenants, restrictions, and provisions:

12 2. No trade, business, profession or any other type of commercial or  
13 industrial activity shall be initiated or maintained within said property or any  
14 portion thereof

15 7. (e) No structure whatsoever other than one single family dwelling or  
16 mobile home, as herein provided, together with a private garage for not more  
17 than three (3) cars, a guest house, service quarters and necessary out buildings  
18 shall be erected, placed or permitted to remain on any portion of said property.

19 15. No outside toilet or other sanitary conveniences or facilities shall be  
20 erected or maintained on the premises.

21 17. The foregoing restrictions and covenants run with the land and shall be  
22 binding upon all parties and all persons claiming through them until June 1,  
23 1994, at which time said covenants and restrictions shall be automatically  
24 extended for successive periods of ten (10) years, or so long thereafter as may  
25 be now or hereafter permitted by law.

\*\* \*



1 as though fully set forth herein.

2 29. Defendants initiation, maintenance and/or expansion of their business enterprise  
3 on said real property constitutes a violation and breach of the recorded Restrictions.

4 30. Said breach by Defendants has resulted in damage and irreparable harm to  
5 Plaintiffs in the destruction of the rural and residential nature of the real property subject to the  
6 recorded covenants and restrictions.

7  
8 **Count II— Breach of Contract**

9 31. Plaintiffs reallege those allegations contained in paragraphs 1 through 30 above  
10 as though fully set forth herein.

11 32. Defendants installation and continued maintenance of an outdoor toilet and/or  
12 sanitary facility on said property is a violation and breach of the recorded Restrictions.

13 33. As a result of said breach by Defendants, Plaintiffs have been damaged and  
14 suffer irreparable harm in the destruction of the rural and residential nature of the real property  
15 subject to the recorded covenants and restrictions.

16 **Count III — Breach of Contract**

17 34. Plaintiffs reallege those allegations contained in paragraphs 1 through 33 above  
18 as though fully set forth herein.

19 35. Defendants conduct in constructing, installing and maintaining more than one  
20 single family residence on said real property is in breach of the recorded Restrictions.

21 36. As a result of said breach by Defendants, Plaintiffs have been damaged and  
22 suffer irreparable harm in the destruction of the rural and residential nature of the real property  
23 subject to the recorded covenants and restrictions.  
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1 afforded their land as well as every other landowner in Coyote Springs Ranch, provided by the  
2 recorded Restrictions to maintain the rural, residential nature of the area.

3 **DEMAND FOR RELIEF**

4 WHEREFORE, on the basis of the foregoing allegations, plaintiffs, on behalf of  
5 themselves and all other members of the class, demand:

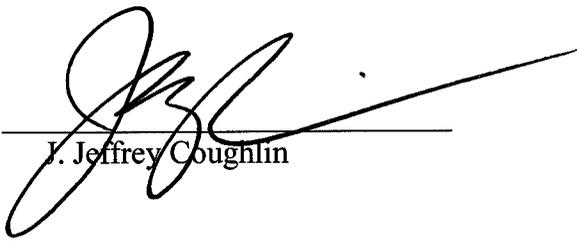
- 6 A. That Plaintiffs be permitted to pursue this action for themselves and on behalf of  
7 a class composed of Coyote Springs Ranch property owners subject to the  
8 recorded Restrictions;
- 9 B. That the Court declare that the class is so numerous that joinder of all its  
10 members is not practicable;
- 11 C. That the Court declare that there are questions of law and fact common to the  
12 class;
- 13 D. That the Court declare that the claims of the Plaintiffs as representative parties  
14 are typical of the claims of the members of the class;
- 15 E. That the Court declare that the Plaintiffs as representatives of the class have no  
16 interests adverse or antagonistic to members of the class and will fairly and  
17 adequately protect the members of the class;
- 18 F. That the Court declare that the issues of fact and law which are common to all  
19 members of the class are clearly predominant, in materiality and significance,  
20 over those issues that may affect only individual class members;
- 21 G. That the Court declare that the class action is superior to any other available  
22 method for resolving this controversy.
- 23 H. That the Court declare that the recorded Restrictions are valid and enforceable;
- 24 I. That the Court declare the rights and other legal relations of Plaintiffs and  
25 Defendants arising from the recorded Restrictions;

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- J. That the Court declare that Defendants conduct constitutes a breach of said recorded Restrictions;
- K. That the Court permanently enjoin Defendants from initiating, maintaining or expanding their current business enterprise on said property as violate of the recorded restrictions and covenants pertaining to the real property;
- L. That the Court order Defendants to remove any and all conditions or activities on said land that violates any restriction or covenant as provided in the recorded Restrictions;
- M. That the Court award Plaintiffs their reasonable attorney's fees and costs as provided in the recorded Restrictions, and pursuant to A.R.S. § 12-341.01; and,
- N. That the Court enter judgment for the Plaintiffs and against the Defendants and award such other and further relief as the Court deems just and equitable under the circumstances.

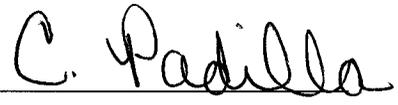
DATED this 22<sup>nd</sup> day of July, 2009

**J. JEFFREY COUGHLIN PLLC**

By:   
J. Jeffrey Coughlin

COPY of the foregoing  
mailed this 22<sup>nd</sup> day of  
July, 2009 to:

Jeffrey R. Adams  
ADAMS & MULL, PLLC  
211 East Sheldon Street  
Prescott, AZ 86301  
Attorneys for Defendants

By: 

STATE OF ARIZONA, County of Yavapai - 17451  
I do hereby certify that the instrument was filed and recorded at the request of Tom Lynch  
on June 13 A.D. 1974 at 1:35 o'clock f Book 91a Official Records  
Page 680-681-682 Records of Yavapai County, Arizona.

WITNE'S my hand and official seal the day and year first above written.

PATSY C. JENNEY, County Recorder  
By Mary E Hampton Deputy

CUYOTE SPRINGS RANCH

200

DECLARATION OF RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

That Robert D. Conlin and Margaret Dell Conlin, his wife, and David A. Conlin, Jr., husband of Anne Conlin, dealing with his sole and separate property, being the owners of the following described premises, situated in the County of Yavapai, State of Arizona, to-wit:

Covenants and restrictions if any, based upon race, color, religion, sex, handicap (familial or national origin) are deleted unless and only to the extent that said covenant is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

GOVERNMENT LOTS One (1) and Two (1) and the South half of the Northeast quarter and the Southeast quarter of Section One (1); all of Section Twelve (12); the East half and the East half of the East half of the Southwest quarter and the East half of the East half of the Northwest quarter and the Northwest quarter of the Northeast quarter of the Northwest quarter of Section Thirteen (13); the East half of Section Twenty-four (24); the East half of Section Twenty-five (25), all in Township Fifteen (15) North, Range One (1) West of the Gila and Salt River Base and Meridian; and

All of Section Six (6); all of Section Seven (7), GOVERNMENT LOTS One (1), Two (2), Three (3), and Four (4), and the Southeast quarter of the Southwest quarter and the South half of the Northeast quarter of the Southwest quarter of Section Nineteen (19), all in Township Fifteen (15) North, Range One (1) East of the Gila and Salt River Base and Meridian.

Covenants and restrictions if any, based upon race, color, religion, sex, handicap (familial or national origin) are deleted unless and only to the extent that said covenant is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

and desiring to establish the nature of the use and enjoyment of the premises hereinabove described, sometimes hereinafter referred to as property or premises, does hereby declare said premises subject to the following express covenants and stipulations as to the use and enjoyment thereof, all of which are to be construed as restrictive covenants running with the title to said premises and each and every part and parcel thereof and with each and every conveyance thereof hereafter made to-wit:

1. Each and every parcel of the above-described premises shall be known and described as residential parcels; that is to say, mobile, modular or permanent dwellings may be erected and maintained upon said premises, subject to limitations with respect thereto as hereinbelow set forth.
2. No trade, business, profession or any other type of commercial or industrial activity shall be initiated or maintained within said property or any portion thereof.
3. Said property or any portions thereof shall not be conveyed or subdivided into lots, parcels or tracts containing less than nine (9) gross acres, nor shall improvements be erected or maintained in or upon any lot, parcel or tract containing less than such nine (9) gross acres.
4. No structure or improvement of any kind or nature whatsoever shall be erected, permitted or maintained upon, over or across the easements or reservations for utilities or drainage, if any.
5. Residence buildings must be completed within twelve (12) months from commencement of construction. No garage, carport or other building shall be commenced or erected upon any portion of said property until the main dwelling building complying with this Declaration is under construction or has been moved onto the premises. Commencement of construction, for the purposes of this Declaration, shall be deemed to be the date material, raw or otherwise, shall have been placed or stored upon the premises.
6. All residence buildings to be erected, constructed, maintained or moved upon the premises or any portion thereof, as the case may be, shall be of new construction. Residence buildings shall have concrete foundations and hardwood or concrete floorings.

square feet of ground floor area including storage but exclusive of any portion thereof used for open porches, pergolas, patios, carports or garages, whether or not they are attached to, or adjacent to said residence.

(b) Mobile homes shall (1) contain not less than 720 square feet of ground floor area devoted to living purposes; (2) be not less than 12 feet in width; (3) be placed so that the floor thereof is not more than 8 inches above the ground level;

(c) Travel Trailers or campers may occupy homesites during vacation periods, not [REDACTED], or during the period of residence construction.

(d) No prefabricated or pre-erected dwelling having less than the above applicable square foot requirements, exclusive of open porches, pergolas or attached garage, if any, shall be erected, permitted or maintained on any portion of said property.

(e) No structure whatever other than one single family dwelling or mobile home, as herein provided, together with a private garage for not more than three (3) cars, a guest house, service quarters and necessary out buildings shall be erected, placed or permitted to remain on any portion of said property.

8. No 'Real Estate' or 'For Sale' sign or signs exceeding 24" by 24" may be erected or maintained on said premises. No general advertising signs, billboards, unsightly objects or public or private nuisances shall be erected, placed or permitted to remain on any portion of said premises.

9. No abandoned auto or auto parts or used machinery or other salvage or junk shall be placed or permitted to remain on any portion of said premises.

10. No swine shall be raised, bred or kept upon said premises. Said premises shall not be used in any way or for any purpose that may emit foul or noxious odors.

11. No mobile home shall be used or permitted to remain upon any lot unless such mobile home shall have two hundred (200) square feet of permanent roof, exclusive of mobile home roofing, and two hundred (200) square feet of concrete flooring, including cabanas, porches, storage, carports and garages, but exclusive of any portion thereof used as flooring or base for said mobile home.

12. All structures on said lots shall be of new construction, not exceeding 35 feet in height, and no buildings shall be moved from any other location onto any of said lots with the exception of prefabricated or pre-erected dwellings where the use thereof is permitted.

13. No temporary building may be moved onto or constructed on said premises, with the exception of temporary shop or office structures erected by contractors, or buildings during the actual bonafide construction or a permitted structure upon the premises, provided the contractor or builder agrees to remove such temporary shop or office structure within five (5) days after the actual final completion date of his construction activities of the premises.

14. No construction shed, basement, garage, tent, shack or other temporary structure shall at any time be used as a residence either temporarily or permanently.

15. No residence or dwelling shall be occupied or used prior to installations therein of water flush toilets and sanitary conveniences or facilities and shall be maintained in a sanitary manner and in conformity with all applicable local, county or state laws, as the case may be. No outside toilet or other sanitary conveniences or facilities shall be erected or maintained upon said premises.

[REDACTED] garbage or trash containers, oil tanks, bottled gas tanks and other such facilities shall be underground or placed in an enclosed area so as to not be visible from the adjoining properties.

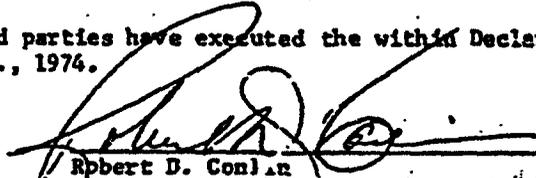
17. The foregoing restrictions and covenants run with the land and shall be binding upon all parties and all persons claiming through them until June 1, 1994, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, or so long thereafter as may be now or hereafter permitted by law.

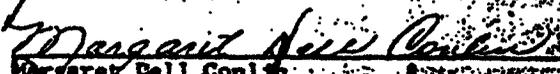
18. Invalidation of any of the restrictions, covenants or conditions above by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

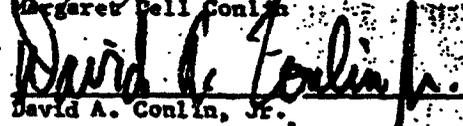
19. If there shall be a violation or threatened or attempted violation of any of said covenants, conditions, stipulations or restrictions, it shall be lawful for any person or persons owning said premises or any portion thereof to institute proceedings at law or in equity against all persons violating or attempting to, or threatening to violate any such covenants, restrictions, conditions or stipulations, and either prevent them or him from so doing.

The violation of these restrictive covenants, conditions or stipulations or any one or more of them shall not affect the lien of any mortgage now of record, or which hereafter may be placed of record, upon said premises or any part thereof.

IN WITNESS WHEREOF, the above named parties have executed the within Declaration of Restrictions this 12th day of June, A.D., 1974.

  
Robert D. Conlin

  
Margaret Bell Conlin

  
David A. Conlin, Jr.

STATE OF ARIZONA )  
County of Maricopa ) ss.

On this, the 12th day of June, 1974, personally appeared Robert D. Conlin and Margaret Bell Conlin, his wife.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My commission expires: 2-20-77

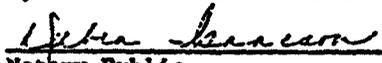
  
Notary Public

STATE OF ARIZONA )  
County of Maricopa ) ss.

On this, the 12th day of June, 1974, personally appeared David A. Conlin, Jr.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My commission expires: 2-20-77

  
Notary Public